Annex 18

Summaries of Selected Cases Concluded by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

EFFICIENCY UNIT ("EU"), HIGHWAYS DEPARTMENT ("Hy D"), WATER SUPPLIES DEPARTMENT ("WSD") AND ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT ("E&MSD")

Case Nos. OMB 2006/1337; OMB 2006/3326-3328

EU – complaint handling – failing to handle and follow up properly a complaint about reinstatement of bollard lights at a street refuge – partially substantiated

Hy D and WSD – same – same – substantiated

E&MSD – same – same – unsubstantiated

The Complaint

The complainant discovered that a pair of bollard lights at a street refuge had been removed for some time and not reinstated, leaving two holes on the ground and posing a hazard to passers-by. He called the Integrated Call Centre ("ICC") under EU many times to complain but to no avail. Feeling aggrieved, he lodged a complaint with this Office against EU, Hy D, WSD and E&MSD for failing to handle and follow up his complaint properly.

Works Arrangements

2. A private development project needed to carry out improvement works at a road junction and that entailed the removal and subsequent reinstatement of the bollard lights at the refuge. Meanwhile, WSD also needed to lay water pipes at the road junction and the bollard lights had to be removed temporarily. As the works areas of WSD and the private development overlapped, WSD, the WSD contractor, the private development contractor and other departments responsible for road improvement held a meeting to discuss the works arrangements.

3. After discussion, WSD agreed to take up the responsibility to coordinate the reinstatement of the bollard lights, whilst the private development contractor undertook to build the cable duct and draw pit leading to the refuge. Nevertheless, due to poor coordination among the various parties, the bollard lights were never reinstated.

Complaint against Hy D

4. Hy D learned from the WSD contractor earlier that the water works at the said location had already been completed. However, since the cable duct and its ancillary works were not yet completed, Hy D could not direct its contractor to commence the power supply works. Nevertheless, we considered that Hy D should be responsible for monitoring the other organisations in completing the maintenance and repairs of road facilities within a reasonable time span. It should have taken the initiative to urge WSD to take follow-up action promptly to avoid further delay.

5. In addition, we noted that E&MSD had replied by email to ICC's referrals every time, with copies and telephone calls to Hy D for the latter to follow up. However, Hy D neither responded nor took any action. It would not follow up the case until ICC made a formal referral.

6. This Office considered that although Hy D had entrusted E&MSD with the responsibility for the daily inspection and maintenance of bollard lights, it was certainly improper for Hy D not to take follow-up action when E&MSD notify them of the situation.

7. In view of the above, the complaint against Hy D was substantiated.

Complaint against WSD

8. The WSD contractor repaved the road surface before the cable duct was built resulting in the Hy D contractor not being able to commence its power supply works at the site. We considered that WSD, being the coordinating department for all the works, could hardly escape the blame. This also showed WSD's failure to monitor the progress of its contractor effectively, resulting in the perpetuation of the problem.

9. Furthermore, when WSD learned about the problem, it did not liaise with the various contractors to take remedial measures. Nor did it liaise with Hy D on this matter. On the contrary, it set the problem aside such that the matter was further delayed for more than three years.

10. We considered that although the private development contractor was not hired by WSD, the Department should still have taken the initiative to contact the persons responsible for the private development to solve the problem. WSD should never have allowed the cable duct laying works to be delayed without any control.

11. Our investigation revealed deficiency in WSD's file maintenance system. The documentary records were incomplete and the relevant reference data lacking. Improvement was certainly required. Moreover, WSD obviously lacked an effective complaint management mechanism to monitor or follow up cases. As a result, complaints were not handled in a timely way.

12. In summary, WSD had failed to perform its coordinating role in monitoring and ensuring proper completion of the works. The complaint against WSD was, therefore, substantiated.

Complaint against E&MSD

13. E&MSD was generally responsible for the maintenance of bollard lights. Upon receipt of ICC's referral of the complaint, E&MSD had promptly conducted a site inspection and notified Hy D for follow-up action.

14. We considered that E&MSD had properly performed its duties to assist in solving the problem of reinstating the said bollard lights. The complaint against E&MSD was, therefore, unsubstantiated.

Complaint against EU

15. We understood that ICC staff did not actually work in the departments concerned. They could only give answers or make referrals according to the information supplied by those departments. However, ICC could have been more proactive and sought information from E&MSD when the latter repeatedly indicated that it had not received the relevant instructions. In this connection, ICC undertook to make improvement.

16. In fact, ICC had done its best to follow up the case initially and took the initiative to liaise with various departments for a solution. It even contacted WSD, which had not joined ICC's "one-stop" service. That was certainly commendable. However, when ICC received replies from the three departments and learned that the problem remained unsolved, it failed to follow up further such that the case was allowed to drag on for a long time.

17. This Office considered that the objective of ICC was to provide "one-stop" service to answer public enquiries and handle complaints, with a view to enhancing the efficiency of Government departments. However, the way ICC handled this case clearly showed that it had failed to achieve its intended objective.

18. It also showed that whenever there was a more complex complaint or that it involved the jurisdictions of several departments, ICC staff might not have sufficient data and background information to provide answers or make proper referrals. In this connection, this Office had initiated a direct investigation into the capability of ICC in handling complaints generally.

19. In view of the above, the complaint against EU was partially substantiated.

Recommendations

20. The Ombudsman made the following recommendations to Hy D and WSD:

Hy D

(a) set up an effective reminder system as a long-term measure to closely monitor responsible organisations in the complete reinstatement of road facilities within a reasonable time frame so as to ensure road safety;

(b) strengthen its cooperation with E&MSD in the general inspection and maintenance of bollard lights and improve their notification system;

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WSD

(c) establish a sound complaint management mechanism for monitoring the progress of cases so as to effectively handle each and every complaint;

(d) improve its records management to maintain data and files properly. Should the coordination of works involve private organisations, the division of responsibilities and duties should be sorted out as early as possible to avoid any disputes; and

(e) adopt effective measures to better supervise the works of contractors to ensure that they performed their duties in accordance with contract terms and formulate specific procedures and guidelines for staff.

21. Recommendations to EU for systemic improvement would be made separately in our direct investigation report.

A case of delay and lack of coordination

HONG KONG HOUSING AUTHORITY ("HKHA")

Case No. OMB 2005/3974(A)

Slope management – (a) failing to return to the Lands Department a slope adjacent to a housing estate and unreasonably shifting responsibility for maintenance to owners of the estate – partially substantiated; and (b) not informing purchasers of such responsibility in sales brochure – substantiated

The Complaint

The Owners' Corporation ("OC") of a Home Ownership Scheme ("HOS") estate complained that HKHA had failed to return an adjacent slope on temporary lease from the Lands Department ("Lands D") and shifted the responsibility for maintenance to the owners. Furthermore, the sales brochure for Phase II of the estate did not set out such responsibility, which was unfair to the purchasers.

Background

2. The estate had been developed in two phases. A year or so after putting Phase I on sale, HKHA leased an adjacent slope from Lands D for use as a works area. The lease stated that the lessee shall be responsible for managing and maintaining that slope until further notice and that Lands D would resume the slope when necessary.

3. The Deed of Mutual Covenant ("DMC") prepared by HKHA came into effect when the first purchaser signed title deed of the estate. Phase II was put on sale about 18 months later and construction completed four months afterwards. However, Lands D refused to resume the slope despite HKHA's request.

4. Two years later, Lands D wrote to ask the owners of the estate to clear the refuse on the slope. The OC claimed total ignorance of such responsibility.

Comments from HKHA

Complaint Point (a)

5. Initially, HKHA assumed that the management and maintenance responsibility for the slope would be temporary, but included a provision in the DMC to ensure that the responsibility would be collectively borne by the owners after completion of the estate until resumption of the slope by Lands D. When Lands D refused to resume the slope, HKHA did not pursue the matter because Lands D was still studying long-term land use of the slope.

Complaint Point (b)

6. In the sales brochures of both Phases I and II, purchasers were reminded to refer to the land lease and the DMC. When they chose their flats, they were also shown an outline of the DMC which indicated that owners would be responsible for maintaining "all slopes" and all purchasers signed a declaration that they had understood their responsibility for managing and maintaining slopes. Moreover, solicitors had explained salient points of the DMC to the purchasers.

Our Views

Complaint Point (a)

7. Although it was common practice to place the slope maintenance responsibility through the land lease with the lessee (HKHA in this case) who could then transfer the responsibility to the future owners of the estate, the lease in question had no time limit. This meant HKHA or the owners might have to assume permanent maintenance responsibility for a slope originally leased for temporary use. This was not reasonable. However, HKHA had not discussed or negotiated with Lands D to protect its interests or those of the owners. This complaint point was, therefore, partially substantiated.

Complaint Point (b)

8. Purchasers seldom have ample opportunity or sufficient knowledge to understand all the details in the land lease and the DMC. They generally rely on the developer to provide key information and the solicitors to highlight and explain their responsibilities.

9. When Phase I was put on sale, the DMC of the estate was not yet operative. There was no way purchasers could know about the slope maintenance responsibility. When HKHA later decided to pass such responsibility to the future owners of the estate, it ought to have notified the purchasers as soon as possible, so that they could reconsider whether or not to proceed with the purchase.

10. Information from HKHA could not ascertain that the solicitors had drawn the purchasers' attention to the added responsibility for slope maintenance.

11. When Phase II was put on sale, the DMC was already in effect. Nonetheless, the information given by HKHA to purchasers had not clearly spelt out the responsibility for maintaining this peculiar slope. The sales brochure, while showing a plan with some slopes for the owners' maintenance, actually did not cover the slope in question.

12. This Office found it improper of HKHA not to have made full and timely disclosure of all information to purchasers with regard to this significant issue affecting their interests. HKHA did not follow the recommendation by the Law Reform Commission to notify purchasers clearly in sales brochures of any actual or potential responsibility for maintaining slopes. This complaint point was, therefore, substantiated.

13. As it was still possible that the slope would eventually be resumed by Lands D, a solution would be for HKHA to manage and maintain the slope directly until resumption.

Our Recommendations

14. The Ombudsman urged HKHA to:

(a) consider the solution above and negotiate with the OC for early implementation;

(b) avoid accepting unreasonable conditions when leasing land from Government in future; and

(c) review the practice for disclosing important information. Besides clearly informing purchasers of a special responsibility like this in sales brochures, HKHA should promptly and clearly remind purchasers of any additional terms so as to safeguard their interests.

A case of negligence and unfairness

HOUSING DEPARTMENT ("HD")

Case No. OMB 2006/2329

Public housing tenancy – failing to follow established policy to assign the tenancy of a public housing unit, upon divorce of a couple, to the party granted custody of their child – substantiated

The Complaint

Upon divorce from her husband, the complainant was granted custody of their daughter. However, HD did not follow its established policy to assign the tenancy of their public housing unit to her. Instead, her ex-husband was allowed to stay in the unit.

The Policy

2. Under the Policy on Housing Arrangements for Divorced Couples in Public Rental Housing Flats, tenants would not be entitled to additional housing on grounds of divorce. They would have to make their own housing arrangements. If, upon divorce, a couple could not agree which party to take up the tenancy of the existing public housing unit, HD would normally grant the tenancy to the party having the custody of their child. The other party would then be required to move out.

HD Explanation

3. In this case, HD did not follow the policy for the following reasons:

(a) the complainant had been staying elsewhere for some four years and was receiving Comprehensive Social Security Assistance from the Social Welfare Department ("SWD") with a rent allowance for private housing. She was, therefore, not in urgent need of accommodation;

(b) the complainant's ex-husband was suffering from depression after the divorce. To prevent mishaps, SWD had advised HD not to remove him from his existing accommodation;

(c) the complainant's housing request was being followed up by a voluntary agency. Should the agency recommend compassionate rehousing, HD would separately arrange public housing for her; and

(d) notwithstanding the established policy, HD guidelines stated that staff should pay attention to special cases and submit them to their supervisors for consideration where necessary.

Our Observations and Comments

4. Taking account of her ex-husband's mental condition and SWD's advice, we did not dispute HD's decision of not requiring him to move out immediately. However, under the policy, the complainant was entitled to public housing. HD should not have made her wait and separately apply for compassionate rehousing. If HD had difficulty in allocating the existing unit to her, it could simply have offered her another unit.

5. Meanwhile, in view of her ex-husband's condition, HD could have arranged for compassionate "rehousing" (in the existing unit) for him.

Conclusion and Recommendation

6. As HD had deprived the complainant of her entitlement under its established policy, the complaint was substantiated.

7. The Ombudsman recommended that HD review its guidelines to ensure proper implementation of the policy.

A case of wrong decision and failure to follow procedures

Annex 18

Summaries of Selected Cases Concluded by Full Investigation

HOUSING DEPARTMENT ("HD")

Case No. OMB 2006/4378

Surcharge for overstaying – failing to give prior warning on levy of surcharge for overstaying in a public housing unit – partially substantiated

The Complaint

The complainant, a public housing tenant, had applied to HD's property management office for a Certificate of Eligibility for Purchase of a Home Ownership Scheme ("HOS") flat and later bought an HOS flat from the secondary market.

2. Five months later, HD informed her that she should have vacated her public housing unit within 60 days after purchasing her HOS flat. For overstaying in the unit, she was required to pay triple rent according to the policy. The complainant considered this unfair as she had never been informed of such policy.

HD Explanation

3. The HOS purchase application form that the complainant had signed contained a statement that she would surrender her public housing unit within 60 days after completion of the assignment of the HOS flat. The complainant purchased an HOS flat but did not surrender her public housing unit. HD's tenancy management office later discovered her overstaying in the unit for three months. For the period overstayed, she had to pay a Use and Occupation Fee equivalent to three times the normal rent, plus rates. This is to avoid double subsidy to public housing tenants who own HOS flats.

4. As the requirement to surrender public housing units was stated in the HOS purchase application form, HD did not inform the complainant separately of the requirement for triple rent.

Our Comments

5. We acknowledged that the complainant had the obligation to surrender her public housing unit, as stipulated in the HOS purchase application form. We also agreed that HD should charge a higher rent in cases of overstaying to avoid double subsidy.

6. However, the policy of charging triple rent was not mentioned at all in the HOS purchase application form. We considered HD to have a duty to give tenants fair and clear warning of the consequences of overstaying, both at the time of HOS purchase application and close to the expiry of the 60-day limit.

7. Moreover, we questioned the lack of coordination or communication between the property management office and tenancy management office, both under HD. It was surprising that the latter office had not noticed the complainant's overstaying until after three months.

Conclusion and Recommendations

8. On balance, this complaint was partially substantiated.

9. The Ombudsman recommended that HD:

(a) incorporate the requirement for triple rent into the HOS purchase application form to inform tenants and also instruct staff to remind them;

(b) improve the coordination and communication between its property management office and tenancy management office of its estates; and

(c) make it a standard practice, towards the expiry of the 60-day limit, to issue a reminder to tenants concerned to surrender their units and to warn them of the consequences of non-compliance.

A case of lack of transparency and internal coordination

HOUSING DEPARTMENT ("HD")

Case No. OMB 2007/0149

Storeroom rent – unfairly charging higher rent for a storeroom in a public housing estate – substantiated

The Complaint

In 2005, the complainant rented from HD storeroom A in a public housing estate at $2,000 per month. Later, she discovered that the adjacent storeroom B of the same size had been leased out at only $330 per month. She asked HD to adjust the rent for storeroom A based on the 2006 valuation of $770 by the Rating and Valuation Department ("RVD"), but was refused.

Market Rent *vs* Uniform Rent

2. HD explained that storerooms in public housing estates were leased out at either market rent or uniform rent.

3. It charged market rent for those at a better location and of high commercial value. It normally reviews their rent every three years and tenants could renew their lease at the re-assessed market rent.

4. For those storerooms less conveniently located and of low commercial value, uniform rent would be charged just to cover HD's management cost. It was also subject to review every three years. Lease renewal was automatic.

5. Storerooms A and B were located on the podium level. The complainant rented storeroom A through open application and was charged market rent. Storeroom B, on the other hand, had been leased out at uniform rent for more than ten years.

6. HD indicated that it adopted different criteria for determining market rent from those used by RVD to assess the rateable value of property. Hence, it refused the complainant's request for rent adjustment based on RVD valuation.

Our Observations and Conclusion

7. In principle, it was reasonable of HD to have a policy of charging rent differently based on the circumstances to avoid idling of premises. However, the commercial value of a storeroom would change from time to time. HD should have reviewed its arrangements regularly to avoid such unfairness as that between storerooms A and B in this case. There were deficiencies in HD's implementation of its policy.

8. The Ombudsman, therefore, considered this complaint substantiated.

Policy Review

9. HD has since initiated a policy review, with a view to re-assessing rent upon expiry of each lease and charging market rent, where considered appropriate, upon lease renewal.

A case of unfairness and faulty procedures

HOUSING DEPARTMENT ("HD")

Case No. OMB 2007/1791

Public housing allocation – allocating a defective unit to an applicant and refusing to compensate him for his loss – partially substantiated

The Complaint

Having lived in a public housing unit for barely a year, the complainant was asked by HD to move temporarily, for repairs to the floor slab of the unit. He later learned that some other tenants in the building had already been asked to move for a similar reason.

2. The complainant held that as the floor slabs in the building were generally defective, HD should not have allocated the unit to him. He further claimed that he had spent some $40,000 on renovating the unit and so demanded compensation. However, HD refused.

HD's Explanation

3. In accordance with policy, HD had refurbished the unit before allocating it to the complainant. HD's maintenance contractor had inspected the ceiling of the unit below and not found any seepage or spalling.

4. However, spalling was found there a few months later, with serious corrosion of the reinforcing steel. The floor slab in his unit needed repairs. The complainant, therefore, had to move to another unit temporarily.

Relocation Arrangements

5. HD offered to waive the rents for both the unit and his temporary accommodation.

6. Alternatively, the complainant could move to another unit within the estate permanently, with a rent-free period and removal allowance. HD would also "decorate" the unit and provide removal service.

Our Observations and Comments

7. This Office noticed that there had been a total of 13 cases of ceiling spalling involving 26 units in the building within the three preceding years, in which the floor slabs between the upper and lower units had to be recast. We considered that HD should have taken this as an indication of a need for a thorough check of the entire building and not allocated that unit to the complainant.

8. HD had made the complainant move out of his unit soon after moving in, resulting in his loss in renovation costs. The Department should, therefore, provide due remedy by restoring the complainant to his former position, before occurrence of the problem.

9. HD's alternative offer in para. 6 above basically served this purpose. However, the Department should have made that offer at the outset, instead of acting on this Office's inquiry.

Conclusion

10. Whilst it was difficult for us to ascertain whether HD had knowingly allocated a defective unit to the complainant, there had indeed been impropriety in its handling of the case.

11. The Ombudsman, therefore, considered this complaint partially substantiated.

Recommendation

12. We recommended that HD negotiate details with the complainant as soon as possible, to grant him reasonable compensation and minimise any inconvenience arising from his removal.

A case of lack of initiative and consideration

LABOUR DEPARTMENT ("LD")

Case No. OMB 2007/4378

Employees' compensation insurance – failing to verify whether employer had taken out insurance policy for employee when processing work injury case – substantiated

The Case

In 2002, the complainant was hit by a tram on his way to deposit a cheque for his employer. The employer reported the case to LD but denied responsibility, claiming that the complainant was on leave at the time of the accident.

2. The employer provided an insurance cover note to LD. It showed the policy to take effect from the day of the accident. LD staff accepted the policy as valid without further verification.

3. In fact, the policy was taken out after the accident. The complainant came to know about this when he and the tram company had taken the case to court in 2007. The complainant complained to LD, which subsequently prosecuted the employer for failing to obtain compulsory insurance for its employees. The employer was finally convicted by the court of the offence charged.

LD's Maladministration

4. LD is the authority for enforcement of the Employees' Compensation Ordinance. Its staff ought to be well aware of employers' obligation to obtain compulsory insurance for employees and, in handling cases of injury at work, the need to ensure the insurance coverage for the entire period of employment.

5. The staff concerned should not have accepted the cover note and closed the file without checking the insurance policy. Had he checked, he would have found that the policy was purchased after the accident and therefore did not cover the period of employment before and at the time of the accident.

6. Against this background, The Ombudsman considered the complaint substantiated.

Recommendation

7. The Ombudsman suggested LD review its procedures and provide training for staff to ensure they check insurance policies properly.

8. LD accepted our recommendations and adopted improvement measures.

A case of negligence

LANDS DEPARTMENT ("Lands D") AND TRANSPORT DEPARTMENT ("TD")

Case Nos. OMB 2006/3715-3716

Lands D – lease enforcement – failing to take lease enforcement action, thus condoning illegal parking – unsubstantiated

TD – traffic management – failing to curb illegal parking – substantiated

The Complaint

The complainant had repeatedly complained to Lands D and TD about frequent illegal parking of vehicles at the garden of a building and on the adjoining pavement, but to no avail. She alleged that Lands D had failed to take lease enforcement action on such unauthorised use of the building site while TD had failed to curb illegal parking on the pavement, thereby affecting pedestrian safety.

Proper Action by Lands D

2. There is in fact no lease or planning restriction on parking of vehicles at the garden. However, as the adjoining pavement is Government land, occupation of the pavement by vehicles is against the law. Lands D had thus painted demarcation lines to facilitate Police prosecution of illegal parking on the pavement. The Department had also referred the illegal parking problem to TD and the Police for action.

3. Lands D had no authority to stop vehicles from parking at the garden, but had duly assisted in dealing with illegal parking on the pavement.

4. The complaint against Lands D was, therefore, unsubstantiated.

Delay by TD

5. TD had agreed to install railing to prevent vehicles from entering the pavement. However, soon after commencement of the works, TD received a letter from the owner of the garden claiming right of way of the pavement for vehicular access to the garden. TD thus removed the railing.

6. Having reviewed the matter, TD concluded that as only two cars could be parked at the garden and pedestrian traffic along the pavement was low, occasional occupation of the pavement by the cars was not a serious problem and could be handled by law enforcement action.

7. To cope with illegal parking by other vehicles on the pavement, the local District Council proposed the installation of railing along an adjacent section of the pavement. After consulting residents through the Home Affairs Department, TD started the works.

8. This Office noted that while it was necessary for TD to handle the matter prudently, it had taken over 20 months from the commencement of the previous works to that of the latest. That was far too long and had affected pedestrian safety in the interim. We considered TD to have been indecisive and had procrastinated over this issue.

9. In this light, the complaint against TD was substantiated.

Recommendations

10. The Ombudsman urged TD to:

(a) closely monitor the installation of the railing to avoid further delay; and

(b) continue to monitor the traffic condition of the neighbourhood and, where necessary, request the Police to step up enforcement action.

A case of delay

POST OFFICE ("PO")

Case No. OMB 2006/3182

Private posting boxes – installing a public posting box in a private estate rendering it not accessible to non-residents – partially substantiated

The Complaint

The complainant alleged that PO had installed a public posting box in a private estate near his residence instead of installing it on the street outside the estate, rendering it inaccessible to non-residents of the estate and people in the neighbourhood.

Annex 18

Summaries of Selected Cases Concluded by Full Investigation

Installation of Private Posting Boxes

2. Property owners or management companies of private housing estates or lots may apply for installation of “private posting boxes” but have to bear the cost of their purchase, installation and maintenance. Prior approval must be obtained from PO before the boxes could be installed at the specific locations.

3. PO had received a letter from the management office of a private housing estate requesting installation of a posting box in its vicinity. PO staff inspected the postal facilities in the area. Since it took only six to eight minutes to walk from the estate to the nearest posting box, PO considered it unnecessary to install another one there. However, as the management office undertook to meet all the costs required, PO installed a “private posting box” in the estate for the exclusive use of its residents. Meanwhile, PO could save its expenditure on postal facilities.

Staff Negligence

4. The PO conditions for installation of “private posting boxes” required an applicant to affix a notice that it was private. However, due to PO staff negligence, the estate management office was not required to do so before collection services were provided. This caused the complainant to mistake it to be for public use. To avoid recurrence of such misunderstanding, PO subsequently arranged to affix the notice.

5. Moreover, PO had failed to record in its files the justification for approving the installation of an additional posting box in the estate. Such documentation was essential and omission inappropriate.

Impropriety in Charging

6. Our investigation found that PO did not charge at all for collection from any of the “private posting boxes” in Hong Kong. Initially when there were just a few such boxes, providing the collection services did not involve much extra finances.

7. Nevertheless, the cost of purchase and installation was only a one-off capital expenditure, while maintenance would only be a small fraction of the total expenditure. In installing “private posting boxes”, PO should have focused on the cost of collection services as recurrent operating expenditure borne solely by PO.

8. This Office noted that PO had considered there simply to be no need for an additional public posting box in the vicinity of the estate. The “private” posting box was provided in the estate only because the management office asked for it. In this context, although the recurrent expenditure might not have been a burden on PO, these boxes were undeniably an extra service for the convenience of the estate residents. If PO did not charge anything for the collection service, it would be tantamount to using public funds to subsidise the additional expenditure thus incurred. It was a deviation from the “user pays” principle and people would deem that as unfair.

Conclusion and Recommendations

9. PO had approved the installation of the posting box in accordance with the relevant guidelines and considerations. There was no impropriety in processing the application except for the recording and filing procedures which needed improvement. However, PO had failed to charge for the collection services for the "private posting box" for the exclusive use of the estate. PO lacked thorough planning and long-term consideration. Nor did it ensure the proper use of public funds.

10. Against this background, The Ombudsman considered this case partially substantiated.

11. PO accepted our recommendations to:

(a) clearly record the key issues and justification for decisions made when processing each and every application and ensure proper maintenance of file records so as to assess more accurately the feasibility of any addition or relocation of posting boxes; and

(b) expedite the formulation of improvement measures and implementation schedule for collection services and charges for "private posting boxes" and review their effectiveness from time to time to ensure proper use of public funds.

A case of negligence and omission

RATING AND VALUATION DEPARTMENT ("RVD")

Case No. OMB 2006/2795

Numbering of buildings – unreasonably allocating similar numbers to a building and a hotel on separate branches of a street – partially substantiated

The Complaint

The complaint was from the owners' committee of a building (the "Building") at No. 8 of a Y-shaped street. RVD had allocated a similar number (8A) to a new hotel, though it was on another branch of the street.

2. The complainant raised objection on the following grounds:

(a) the number allocated to the hotel did not correspond to its location on the street;

(b) the similarity in the numbers of the Building and the hotel had confused visitors;

(c) the hotel should have been allocated the original numbers (6B - 6E) of the building previously on its site; and

(d) RVD had not consulted the owners of the Building for other options.

RVD Comments

3. RVD explained that when a site was redeveloped, the number would be cancelled with the demolition of the building and a new number allocated to the new building. Notwithstanding the complainant's viewpoints, the Department had to consider the hotel owner's preference and such factors as the numbering pattern of neighbouring buildings, the physical layout of the new hotel and the numbers available for allocation.

Remedial Measures

4. RVD had asked the hotel owner if he would accept another building number. This was rejected because the hotel had prepared both local and overseas promotional materials bearing the number 8A.

5. RVD also met with a representative of the owners of the Building to explore ways to alleviate the owners' concern. However, the complainant was not satisfied.

6. RVD updated its guidelines soon afterwards, requiring staff to refrain from allocating a building number that might cause confusion and to advise property owners against requests for any such numbers. If a property owner insists on such a request, consideration should be given to consulting owners of adjacent buildings likely to be affected.

7. To help members of the public to locate the buildings on the street in question, RVD also asked the Highways Department to alter the street signs at different sections of the street so as to display the respective building numbers.

Our Observations and Comments

8. This Office noted that the numbering pattern of the buildings along the street was irregular. It could indeed confuse the public to have No. 8 and No. 8A on the two different branches of the street.

9. Although RVD's allocation of No. 8A to the hotel was partly consistent with the then prevailing departmental guidelines, the Department had not fully taken into account other factors such as the numbering pattern of the street, which already had the number 8 on its other branch.

10. Nevertheless, RVD's updating of its guidelines was a major improvement to meet community expectations for transparency and consultation. The new street signs put up along the street in question should also help visitors, including postmen, in locating the buildings.

Conclusion

11. On balance, this complaint was partially substantiated.

A case of inadequate deliberation and lack of consultation

Annex 18
Summaries of Selected Cases Concluded by Full Investigation

SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB 2006/4314

Disability allowance – (a) improper handling of application; and (b) poor service attitude – substantiated

The Complaint

In April 2006, the complainant, suffering from severe arthritis, applied for Disability Allowance ("DA"), which required medical assessment by a public hospital. Mr A of SWD Social Security Field Unit told her to take the Medical Assessment Form to the medical social worker at the Queen Elizabeth Hospital ("QEH"). However, the latter advised that the Field Unit should have sent the Form to QEH direct. The complainant then returned the Form to Mr A.

2. In July, when the complainant twice asked Mr A for progress with her case, he was ill-mannered and unhelpful. After her repeated requests, he called the hospital to learn that her application had not been processed as the doctor had forgotten to fill in the Form.

3. In early August, SWD approved the application and advised the complainant to contact Mr B of the Field Unit in September to apply for renewal. She met and telephoned Mr B in September and November but he was also very unfriendly, giving her the cold shoulder when she greeted him and being impatient when she made enquiries.

4. The complainant considered that both Messrs A and B had not followed up her application properly and their service attitude was poor.

Comments from SWD

5. DA applicants should normally hand the Medical Assessment Form to the medical social worker or doctor at the hospital. However, QEH was a unique case in that the Field Unit should send the Form to the hospital direct. SWD admitted that Mr A had been mistaken in telling the complainant to hand in the Form herself. Nevertheless, he had subsequently apologised and mailed the Form to the hospital. He had also enquired about the progress of her case several times on request and confirmed in early August her eligibility for DA.

6. Mr A said that there might have been some misunderstanding as he had never refused to help the complainant, nor had he been impolite. However, he agreed that he should be partly responsible for the complainant's unpleasant experience.

7. Mr B claimed that he had mailed the Form to QEH. When the doctor completed the assessment in late December, he had even asked the hospital to fax him the report for follow-up. He completed processing the case in January 2007 and disbursed the DA to the complainant.

8. Mr B said that his manner of speech had always been "blunt" and the complainant might have misunderstood him. He also admitted partial responsibility for the incident and apologised.

Our Observations and Conclusion

9. Handling DA applications is a daily routine for the Field Unit and yet Mr A made the mistake on the procedures, thus causing the complainant unnecessary shuttling between the Field Unit and the hospital. Both Messrs A and B asked for progress of her case only on request. Such service attitude was unbecoming of a Government department committed to serving the disadvantaged.

10. Judging from the complainant's vivid account and the admission of partial responsibility by both Messrs A and B, we have to conclude that even if there had been misunderstanding, their manners were unsatisfactory.

11. This complaint was, therefore, substantiated.

Recommendations

12. To avoid recurrence, The Ombudsman recommended that SWD:

(a) explore with the Hospital Authority the possibility of standardising the procedures among all public hospitals;

(b) in the interim, revise its departmental guidelines to highlight to staff the unique arrangements with QEH;

(c) instruct staff to be always proactive, polite and caring when dealing with clients; and

(d) enhance its monitoring of DA cases and enter important dates into its computer system for timely follow-up by staff.

A case of error and poor service attitude

Annex 18
Summaries of Selected Cases Concluded by Full Investigation

SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB 2007/1289

Disability allowance – inconsistency in processing renewal of Normal Disability Allowance – partially substantiated

The Complaint

The complainant had lost four left-hand fingers, for which SWD granted Normal Disability Allowance ("NDA") for over ten years. However, it suddenly notified her that the allowance would not be renewed. She could not understand the reason for such inconsistency.

Criteria for Normal Disability Allowance

2. One of the criteria for NDA was that the applicant had to be certified by the Department of Health ("DH") or the Hospital Authority ("HA") as severely disabled for not less than six months (i.e. broadly equivalent to 100% loss of earning capacity such as loss of all ten fingers).

Wrong Assessments in the Past

3. On this consideration, this Office observed that in the previous years, the HA doctors concerned had wrongly assessed the complainant's condition to qualify her for NDA and SWD staff had each time indiscriminately approved her applications.

4. However, SWD staff found some contradictions in her latest medical assessment report and sought clarification from the doctor. The latter subsequently corrected his report and indicated that the complainant did not qualify for NDA.

5. SWD then notified the complainant that she would no longer be granted NDA. As she did not appeal, the case was closed.

6. It was clear that SWD had acted responsibly and reasonably in querying the doctor's assessment on the latest application and in discontinuing the NDA for the complainant. However, her previous applications had not been subject to the same good practice. In the past, SWD staff had simply rubber-stamped all the doctors' recommendations. This accounted for the inconsistency.

7. As the approving authority for NDA, SWD has the responsibility to safeguard proper use of public funds. In making its decision, the Department should not rely solely upon the doctor's assessment and recommendation without its own analysis.

Need for Improvements

8. SWD acknowledged the need to enhance its staff's ability to identify doubtful points in medical assessments and agreed that training in this area should be strengthened.

9. SWD also agreed with HA and DH to prepare a checklist for assessment of disabilities for doctors' reference.

Our Conclusion and Recommendations

10. The Ombudsman considered this complaint partially substantiated.

11. She urged SWD to:

(a) draw up the necessary training programme with urgency;

(b) revise its guidelines for all staff to examine medical assessment reports carefully and seek clarification from the doctor whenever in doubt; and

(c) require staff to study applicants' previous medical assessment reports when processing their applications for renewal of NDA and copy such reports to their assessing doctors for reference.

A case of lack of prudence and dutifulness

TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY ("T & ELA")

Case No. OMB 2007/2900

Complaints about indecent articles – adopting double standards in handling complaints – unsubstantiated

The Complaint

In May 2007, T & ELA received a complaint alleging indecent elements in the Bible. T & ELA concluded that the complaint was not substantiated and submission of the Bible to the Obscene Articles Tribunal ("OAT") for classification was unjustified. The complainant then complained to this Office that T & ELA's refusal to submit the Bible to OAT was unreasonable and that it had adopted double standards compared with its previous handling of a complaint about the *Chinese University Student Press* ("Student Press").

T & ELA's Comments

2. Under the Control of Obscene and Indecent Articles Ordinance, T & ELA may submit to OAT for classification any article suspected to contain obscene or indecent elements.

3. Upon receipt of a public complaint, T & ELA would examine the contents of the article. It would refer to the Guidance to Tribunal laid down in the Ordinance and OAT's previous classification results as well as court decisions in appeal cases, when considering whether the article should be submitted to OAT. T & ELA's criteria were similar to OAT's and in line with the standards of morality, decency and propriety generally accepted by the community. Personal preference of staff members would not be involved, nor would the background of complainants and the number of similar complaints affect T & ELA's judgement.

4. T & ELA stated that it had followed the same procedures and criteria in handling both complaints.

Our Observations

5. Under the Ordinance, T & ELA may submit articles to OAT for classification. In other words, it has the authority to submit, or not.

6. In this case, T & ELA had examined the complaint in accordance with its procedures and, exercising the above authority, decided not to submit the Bible to OAT for classification.

7. Given that OAT is under the Judiciary, which is outside The Ombudsman's jurisdiction, and the dispute over its classification of the Student Press was under judicial review, we could not comment on how T & ELA had handled the Student Press case. Nevertheless, we found T & ELA's explanation regarding its handling of the Bible case consistent with its established criteria and procedures. There was nothing unreasonable or contradictory.

Conclusion and Recommendation

8. The Ombudsman, therefore, considered this complaint unsubstantiated.

9. However, T & ELA's complaint handling procedures, level of staff and overall assessment system had room for improvement. Hence, we recommended a comprehensive review.